Legal Update

December 31, 2014

G. L. c. 94C, § 32J excludes playgrounds located on private property, even if accessible to members of the public.

Commonwealth v Christopher Gopaul, Mass. Appeals Court**,** No. 13-P-959, (2014)

Background: The defendant, Christopher Gopaul (hereinafter referred to as "Gopaul") is alleged to have sold marijuana to an undercover officer within 100 feet of an outdoor playground at a private apartment complex. The playground was not completely surrounded by a fence and anyone could access the playground without opening a gate or door. Additionally, there were no signs restricting access to the playground. Police arrested Gopaul and he appealed arguing that the playground was not public and therefore he could not be charged with a school zone violation. The motion judge denied the motion and found the interpretation of the word playground in the statute should not be narrowly restricted to include only public playgrounds. The motion judge denied the defendant's motion and appealed whether the statute G. L. c. 94C, § 32J applies only to "public" playgrounds and second, whether G. L. c. 94C, § 32J excludes playgrounds located on private property, even if accessible to members of the public.

Conclusion: The Court held that the motion judge erred and that the defendant's motion to dismiss should have been allowed. The primary issue before was whether the Legislature intended G. L. c. 94C, § 32J to extend the word public to both playgrounds and parks. The Court concluded that public applied to both playgrounds and parks. However G. L. c. 94C, § 32J excludes playgrounds located on private property, even if accessible to members of the public.

For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.

1st Issue: Does “public” only apply to playgrounds or does it include parks?

The Court concluded that the statute distinguishing “public” applies to both playgrounds and parks. Section § 32J states, “when a person commits any of certain drug offenses" while in or on, or within one thousand feet of the real property comprising a public or private accredited preschool, accredited headstart facility, elementary, vocational, or secondary school whether or not in session, or within one hundred feet of a public park or playground. . ." G. L. c. 94C, § 32J, as amended through St. 1998, c. 194, § 146. The Court concluded that the term "playground" must be understood in conjunction with the more specific term "public park." This conclusion is also supported by the fact that "playground," while not defined in c. 94C, is defined in the Federal school zone statute, the precursor and counterpart to § 32J, as follows: "any outdoor facility (including any parking lot appurtenant thereto) intended for recreation, open to the public, and with any portion thereof containing three or more separate apparatus intended for the recreation of children including, but not limited to, sliding boards, swingsets, and teeterboards" (emphasis supplied). 21 U.S.C. § 860(e)(1) (2012).

2nd Issue: Does “public playground include a playground located on private property?

The Court concluded that **privately** owned playgrounds fall outside the scope of § 32J. As part of its analysis, the Court examined the plain language of the statute and determined that even if a privately owned playground is open to the public, it still falls outside the scope of the statute. The phrase may reasonably be read to draw a simple, easily applied distinction between playgrounds owned by public and private parties.

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